

REMARKS

I. Introduction

The undersigned thanks Examiner Walker for her review and consideration of the present Application. In response to the non-final Office action mailed November 7, 2007, the undersigned submits the following amendment and remarks. Upon entry of the amendment, claims 1, 3-14, 16-26, and 28-30 are pending in the application. Claim 15 was previously canceled in a Second Preliminary Amendment mailed on October 23, 2007 in anticipation of the new patent rules. This Second Preliminary Amendment, however, crossed in the mail with the November 7, 2007 Office action and was not entered before the mailing of the Office action. Because the new patent rules were never implemented, the present amendment reinstates previously canceled claim 15 as new claim 28. The present amendment amends claims 1 and 23, cancels claim 2, and adds claims 28-30. Support for these amendments may be found, among other places, on page 3, lines 20-25 and page 8, lines 9-14 of the specification. No new matter has been added by the present amendment.

The present response is believed to traverse all of the prior Office action rejections, and allowance of the pending claims is kindly requested.

II. Objection to the Specification

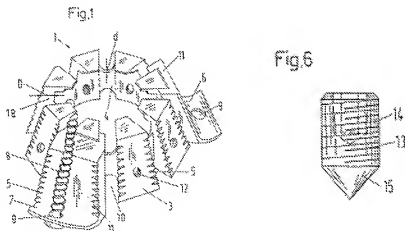
The Examiner objected to the disclosure because it did not include a subheading for "Brief Description of the Drawing." Please insert the heading "Brief Description of the Drawings" on page 5 before line 10.

III. Rejection of Claims 1-7, 14-15, 17 and 19-22 Under 35 U.S.C. § 102

The Office action rejected claims 1-7, 14-15, 17, and 19-22 under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,549,692 to *Hauser, et al.* ("*Hauser*"). The limitations of claim 2 have been incorporated into claim 1, and claim 2 has been canceled; therefore, the rejection of claim 2 is moot. Claim 15 was previously cancelled in a Second Preliminary Amendment filed on October 23, 2007, but has been reinstated as new claim 28.

A. *Hauser*

As shown in Figure 1 below, *Hauser* shows a hipjoint shell 1 that is anchored in the pelvis. Supporting bodies 11 are fixed to regions 3 with setscrews 13 (shown in Figure 6 below), which are screwed from inside the shell 1 to connect the supporting bodies 11 to the regions 3 of the shell 1. *Hauser*, col. 2, ll. 64-67.



The supporting body 11 covers the entire region 3 of the shell 1 to enlarge the shell 1. *Hauser*, col. 1, ll. 20-32. Because supporting body 11 is attached to the region 3 of the shell 1 with a setscrew 13, the supporting body 11 is attached at a fixed position relative to the shell 1. *Hauser*, col. 1, ll. 64-67; col. 2, ll. 64-67. As shown in Figure 1 above, the

supporting body 11 is connected to the shell 1 by means of the setscrew 13, and the setscrew 13 is not available to attach the shell 1 to a second component. A second bone screw 8 can then be inserted through a drilled hole 9 provided in the support body 11. The bone screw 8 does not fix the supporting body 11 to the shell 1, and is inserted into the supporting body 11 at a fixed angle. *Hauser*, Fig. 1, col. 3, ll. 19-21.

B. *Hauser Does Not Anticipate Claims 1-7, 14-15, 17, 19-22, and New Claim 28.*

For a reference to anticipate a claim under § 102, it must describe, either expressly or inherently, each and every element set forth in the claim. MPEP § 2131. *Hauser* does not describe, either expressly or inherently, each and every element set forth in the pending claims.

Amended claim 1 requires a fixing assembly having a component with a surface, a fixing member, and a fixing screw that secures the fixing member to the surface of a component while remaining available to secure the component to a second component. Moreover, amended claim 1 requires that the orientation of the fixing member relative to the surface of the component be adjustable.

Figure 2 below shows one non-limiting embodiment of a fixing assembly including an acetabular cup 11, a fixing member 12, and a fixing screw 13. In this embodiment, the fixing screw 13 secures the fixing member to the surface of the component, while also remaining available for use to secure the component to a second component, such as a patient's bone.

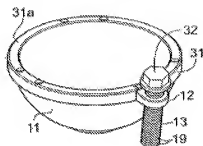


Fig. 2

Hauser does not describe expressly or inherently a fixing assembly having a fixing member and a fixing screw that passes through an aperture in the fixing member to secure the fixing member to the surface of the component so that the fixing screw is available for securing the component to a second component. As explained above, claim 1 requires a fixing member that is secured to the surface of a component with a fixing screw, where the fixing screw is available for securing the component to a second component. *Hauser*, however, discloses the use of a setscrew 13 that passes through a shell 1 to secure a supporting body 11 onto the shell 1. See Fig. 1, col. 2, ll. 55-59 and. 64-67.

The Action construes the regions 3 of the shell 1 as a component and the supporting body 11 as a fixing member. *Hauser* only discloses the use of a setscrew 13 to secure the supporting body 11 to the shell 1; the setscrew 13 does not remain available to secure a second component to the shell. Although *Hauser* shows the use of a second screw (bone screw 8), bone screw 8 does not fix a fixing member to the component, as required by amended claim 1. Accordingly, *Hauser* does not disclose a fixing screw that secures a fixing member to the surface of a component, where the fixing screw is available for securing the

component to a second component. For this reason alone, amended claim 1 is not anticipated by *Hauser*.

In fact, *Hauser* teaches away from fixing assemblies that include a fixing screw that secures a fixing member to the surface of a component, where the fixing screw remains available for securing the component to a second component because *Hauser* discloses securing a supporting body to a shell using one fully occupied screw, and then introducing a second screw.

Moreover, amended claim 1 requires that the orientation of the fixing member relative to the surface of the component be adjustable. *Hauser* only discloses attaching a supporting body 11 to a shell 1 at a fixed position. *Hauser*, col. 1, ll. 64-67; col. 2, ll. 64-67. In fact, *Hauser* explicitly discloses “fixing the supporting body an (sic) exact position of it relative to the shell . . .” *Hauser*, col. 1, ll. 65-67. *Hauser* also discloses the use of a second screw, bone screw 8, that is inserted through the supporting body 11 at a fixed orientation. *Hauser*, Fig. 1, col. 3, ll. 19-21. Therefore, *Hauser* does not expressly or inherently disclose that the orientation of the fixing member relative to the surface of the component be adjustable, as required by amended claim 1. Accordingly, in addition to the reasons described above, independent claim 1 is not anticipated by *Hauser*.

Dependent claims 3-7, 14-15, 17, and 19-22 are patentable for the reasons claim 1 is patentable, and may be patentable for additional reasons. For the reasons stated above, the undersigned respectfully submits that pending claims 1, 3-7, 14-15, 17, and 19-22 are not

anticipated by the *Hauser*, and respectfully respects withdrawal of the § 102 rejection and allowance of the pending claims.

IV. Rejection of Claims 23-26 Under 35 U.S.C. § 102

The Office action rejected claims 23-26 under 35 U.S.C. § 102(b) as being anticipated by *Hauser*. The undersigned respectfully traverses this rejection and requests that it be withdrawn.

Like amended claim 1, amended claim 23 requires that the orientation of the fixing member relative to the surface of the component be adjustable. As described in detail above, *Hauser* only discloses attaching a supporting body 11 to a shell 1 at a fixed position. Therefore, *Hauser* does not expressly or inherently disclose that the orientation of the fixing member relative to the surface of the component be adjustable, and independent claim 23 is not anticipated by *Hauser*.

Dependent claims 25 and 26 are patentable for the reasons claim 23 is patentable, and may be patentable for additional reasons. For the reasons stated above, the undersigned respectfully submits that pending claims 23-26 are not anticipated by *Hauser*, and respectfully respects withdrawal of the § 102 rejection and allowance of the pending claims.

V. 35 U.S.C. § 103 Rejections

The Examination Guidelines for Determining Obviousness Under 35 U.S.C. 103 in View of the Supreme Court Decision in *KSR International Co. v. Teleflex*, Federal Register, Vol. 72, No. 195, p. 57527 (October 10, 2007) explain what is required where an obviousness rejection is made:

As reiterated by the Supreme Court in *KSR*, the framework for the objective analysis for determining obviousness under 35 U.S.C. 103 is stated in *Graham v. John Deer Co.* Obviousness is a question of law based on underlying factual inquiries. The factual inquiries enunciated by the Court are as follows:

(1) Determining the scope and content of the prior art;
(2) Ascertaining the difference between the claimed invention and the prior art; and

(3) Resolving the level of ordinary skill in the pertinent art.

Objective evidence relevant to the issue of obviousness must be evaluated by Office personnel. . . .

Office personnel fulfill the critical role of fact finder when resolving the *Graham* inquiries. . . . Office personnel must therefore ensure that the written record includes findings of fact concerning the state of the art and the teachings of the references applied. . . .

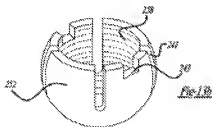
Once the findings of fact are articulated, Office personnel must provide an explanation to support an obviousness rejection under 35 U.S.C 103.

The November 7, 2007 Office Action does not comply with these requirements. For the reasons explained in detail below and with specific reference to the Examiner's rejections, none of *Hauser*, U.S. Patent No. 6,475,241 to *Pappas* ("*Pappas*"), U.S. Patent No. 6,416,553 to *White et al.* ("*White*"), U.S. Patent No. 6,162,257 to *Gustilo, et al.* ("*Gustilo*"), or any other relevant prior art of record, either alone or in combination, discloses each and every element of the amended claims.

A. Rejection of Claims 8-12 and 16

The Office action rejected claims 8-12 and 16 under 35 U.S.C. § 103(a) as being unpatentable over *Hauser* in further view of *Pappas*. The Office action rejected claims 8-12 and 16 over *Hauser* in further view of *White*. Neither *Hauser* nor *Pappas* nor *White* teaches, discloses, or suggests each and every element of pending claims 8-12 and 16. Accordingly, the undersigned respectfully traverses this rejection and requests that it be withdrawn.

As explained above, *Hauser* does not disclose each and every element of pending claim 1. Claims 8-12, and 16 depend from claim 1, and therefore *Hauser* does not disclose each and every element of pending claims 8-12 and 16, for at least the reasons stated above. *White* discloses an acetabular prosthesis that includes an acetabular cup and a modular attachment component, the component including an attachment member and an engagement member. Claim 8 requires that the male location feature have a slit, such that the male location feature is divided into two arms. The Action states that *White* teaches a fixing member with a male feature that has slots 241 and notches 243, as shown in Figure 13b reproduced below.



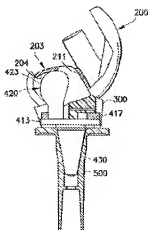
The undersigned respectfully disagrees that Figure 13b discloses a male location feature with a slit that divides the male location feature into two arms, as required by claim 8. Specifically, if the male location member is located on the fixing member, the male location feature of claim 8 must fit together with a female location feature located on the surface of a component. *White* does not disclose, teach, or suggest a male location feature on a fixing member that fits together in use with a female location on the surface of a component. And *White* certainly does not disclose, teach, or suggest a male location feature having a slit that divides a male location feature into two arms that fits together with a female location feature on the surface of a component. Claim 9 depends from claim 8, and claims 10 and 16 depend from claim 9, and therefore none are not made obvious by either *Hauser* or *White* for at least the reasons above, and may be allowable for additional reasons. Similarly, claim 11 depends from claim 10, and is therefore not made obvious by either *Hauser* or *White* for at least the reasons above, and may be allowable for additional reasons.

Because neither *Hauser* nor *White* teaches, suggests, or discloses a male location feature on a fixing member having a slit such that the male location feature is divided into two arms, where the male location feature fits together with a female location feature on the surface of a component, the undersigned respectfully submits that claims 8-12 and 16 are not made obvious by *Hauser* in view of *White*, and respectfully requests withdrawal of the § 103 rejection and allowance of pending claims 8-12 and 16.

B. *Rejection of Claim 13*

The Office action rejected claim 13 under 35 U.S.C. § 103(a) as being unpatentable over *Hauser* in further view of *Pappas*. Neither *Hauser* nor *Pappas* teaches, suggests, or discloses each and every element of pending claim 13. The undersigned respectfully traverses this rejection and requests that it be withdrawn.

As explained above, *Hauser* does not disclose each and every element of pending claim 1. Pending claim 13 depends from claim 1, and therefore *Hauser* does not disclose each and every element of pending claim 13, for at least the reasons stated above. *Pappas* discloses a knee joint prosthesis including femoral and tibial components. The Action states that *Pappas* teaches a male location feature made of a resiliently deformable material. The undersigned respectfully disagrees with the Office's characterization of feature 430 (shown in the figure reproduced below) as a male location feature that works with a female location feature in the manner required by claim 13.



Therefore, in addition to the reasons stated above, neither *Hauser* nor *Pappas* teaches, suggests, or discloses each and every limitation of claim 13, and the undersigned respectfully requests withdrawal of the § 103 rejection and allowance of pending claim 13.

C. *Rejection of Claim 18*

The Office action rejected claim 8 under 35 U.S.C. § 103(a) as being unpatentable over *Hauser* in further view of *Gustilo*. Neither *Hauser* nor *Gustilo* teaches, suggests, or discloses each and every element of pending claim 18. The undersigned respectfully traverses this rejection and requests that it be withdrawn.

As explained above, *Hauser* does not disclose each and every element of pending claim 1. Pending claim 18 depends from claim 1, and therefore *Hauser* does not disclose each and every element of pending claim 18, for at least the reasons stated above. In addition to the reasons that pending claim 1 is allowable, pending claim 18 is allowable because neither *Hauser* nor *Gustilo* discloses, teaches, or suggests a component having a circumferential groove forming a female location feature that locks the fixing member to the component. The undersigned respectfully disagrees with the Action's characterization that the acetabular cup of Figure 8 (reproduced below) has a circumferential groove as required by claim 18.

CONCLUSION

The undersigned respectfully submits that all pending claims are in a condition for allowance. Any fees due at this time may be charged to Deposit Account number 11-0855. If there are any matters that can be addressed by telephone, the Examiner is urged to contact the undersigned attorney at 404.532.6947.

Respectfully submitted,

/Renae A. Bailey 58961/

Renae A. Bailey
Reg. No. 58,961
Attorney for the Applicants

KILPATRICK STOCKTON LLP
1100 Peachtree Street
Suite 2800
Atlanta, Georgia, 30309-4530
404.532.6947 (direct dial)